IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 1968 of 2007.

Date of Decision: 20th December, 2007.

State of Himachal Pradesh .. Petitioner.

Versus

Dr. Sanjay Vikrant .. Respondent.

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.
The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] Yes.

For the petitioner: Mr. M.S. Chandel, Advocate General, with Mr. J.K. Verma, Deputy Advocate General.

For the respondent: Mr. Shrawan Dogra, Advocate.

V.K. Gupta, CJ (Oral)

The respondent is working as Assistant Professor in the Super Specialty Department of Nephrology in Indira Gandhi Medical College, Shimla. Vide Advertisement No.01/2006(FC), All India Institute of Medical Sciences, New Delhi (AIIMS for short) invited applications from eligible persons for some appointments, including the appointment on the post of Associate Professor of Nephrology. One of the conditions attached with the aforesaid Notification was that the employees of the Government or semi-Government Departments should route their applications through proper channel. This necessarily meant that the respondent being an employee of the Government of Himachal Pradesh, for being eligible to apply, had to route his application through the Government of Himachal

[1] Whether the reporters of Local Papers may be allowed to see the judgment?

Pradesh. In other words, he had to obtain a 'No Objection Certificate' (NOC for short) from the State Government enabling him to apply in AIIMS for the aforesaid post of Associate Professor.

The respondent applied to the State Government for issuance of NOC on 15th January, 2007. The Principal Secretary (Health) Government of Himachal Pradesh vide communication No. HFW (DME)H(I)A-138(PF)/04- dated 24th February, 2007 upon consideration, rejected the application of the respondent for grant of NOC. Aggrieved, respondent filed Original Application being OA No.1815 of 2007 before the learned HP State Administrative Tribunal, which on 29th August, 2007 passed an ad-interim order directing the State Government to issue NOC provisionally for enabling the respondent to compete for the aforesaid post of Associate Professor in Nephrology in AIIMS subject to the final outcome of the said Original Application. This order has been challenged by the State Government-writ petitioner in this Court in this petition filed under Article 226 of the Constitution of India.

We have heard the detailed arguments of the learned Counsel for the parties.

Mr. Shrawan Dogra, learned Counsel appearing for the respondent has basically raised the issue of vesting of fundamental right in the respondent with respect to his consideration for the aforesaid post. Mr. Dogra submits that the respondent has a fundamental right of being considered for appointment to the post of Associate Professor in AIIMS. Additionally his argument is that for betterment of his service career and prospects, if the respondent wants to compete for the post of Associate Professor in the Department of Nephrology in AIIMS, he should be allowed to do so and the State Government should not refuse NOC for this purpose.

Article 162 of the Constitution of India reads thus:-

"162. **Extent of executive power of State.-** Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

Even though there is no specific provision anywhere in the Rules of the State Government relating to the grant or refusal of NOC with respect to the State Government employees for their being enabled to compete for jobs outside the State, even while being in the employment of the State, in our considered opinion, the availability, vesting and the extent of the executive power of the State as per Article 162 of the Constitution of India is plenary in nature and being exercised objectively, fairly and in compliance to Article 14 of the Constitution of India without it being arbitrary, the State Government has the power, authority and jurisdiction to consider and decide every application for grant of NOC and if in the opinion of the State Government, based upon the aforesaid criteria, the NOC is required to be refused, it has the power, authority and jurisdiction to do so. The reason advanced by the State Government-writ petitioner in this petition as also argued by Mr. M.S. Chandel, learned Advocate General, is that the respondent is the only doctor available in IGMC with the Super Specialty qualification of Nephrology. According to Mr. Chandel, respondent had joined the services of the State Government as an ordinary MBBS doctor and while in the service of the State Government he had

proceeded for higher studies, initially for doing M.D. in medicine and thereafter in the Super Specialty course of D.M. in Nephrology. In the year 2002 the respondent was appointed as Assistant Professor in the Super Specialty Department of Nephrology and since then has been working there. Recently the State Government has created a post of Associate Professor as well as a post of Professor and in terms of Recruitment and Promotion Rules the respondent is eligible for being appointed on the higher post of Associate Professor. Mr. Chandel actually has made a statement before us that because of his eligibility the State Government will take steps for according consideration to the respondent for his promotion to the higher post of Associate Professor. We on our part also feel that the respondent has very fair chances of being promoted because of his eligibility as also the fact that he perhaps is the only person available as well as eligible in terms of R&P Rules. Be that as it may, the fact remains that the overriding consideration, rather the only consideration of the Super Specialty Department of Nephrology being left without any doctor is germane as well as relevant to the refusal of NOC on the part of the State Government. The act of the State Government in refusing the NOC on this count can thus neither be called as arbitrary nor whimsical. It is based upon the aforesaid objective criterion and has a direct nexus with the object sought to be achieved.

If the respondent is very keen to better his career prospects, to advance his career and to attain what he thinks are brighter gains than available in IGMC Shimla, nothing stops or prevents him from resigning from the government employment. Here we would also like to meet the contention of Mr. Dogra about the right of the respondent of being considered for higher post. Yes, he has the right of being considered and

that consideration basically is available with AIIMS. The right to consideration does not mean and cannot be extended to include the right to get NOC from the State Government for routing his application through the State Government. Both stand on different footings.

The Tribunal in the impugned interim order directed the petitioner-State to grant NOC provisionally to the respondent. In the facts and circumstances of this case, we find that the grant of NOC even provisionally would amount to granting relief to the respondent finally because equipped and armed with the provisional NOC if the respondent actually gets selected in AIIMS his purpose is achieved. Laced with the selection and appointment order the respondent can at that stage say good-bye to IGMC as well as the State Government. If that happens, the State Government perhaps will not be in a position to prevent the respondent from leaving IGMC as well as the Department of Nephrology without any doctor.

For the aforesaid reasons, we allow this petition and set aside the order of the Tribunal. No order as to costs.

In view of the disposal of the writ petition all the miscellaneous applications are also disposed of.

(V.K. Gupta), C.J.

December 20, 2007. **(Sanjay Karol), J.**
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